



Lynda M. Connolly  
Chief Justice

## Trial Court of the Commonwealth District Court Department

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TRANSMITTAL NO. 973

Last Transmittal No. to:	
First Justices	972
Other Judges	972
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CPOs	972

CLERK-MAGISTRATES: *Please distribute a copy of this memorandum to the court's Forms & Systems Coordinator.*

### MEMORANDUM

TO: District Court Judges, Clerk-Magistrates and Chief Probation Officers  
FROM: Hon. Lynda M. Connolly, Chief Justice  
DATE: January 16, 2008  
SUBJECT: **Revised c. 209A order forms; New notice with criminal complaints**

As you may be aware, the U.S. Department of Justice, through its Office on Violence Against Women, administers grant funds under the Federal Violence Against Women Act (VAWA). Massachusetts receives more than \$9 million in such funds each year, much of it for the support of victim advocate programs throughout the Commonwealth.

Starting this month, continued eligibility for VAWA funding is contingent upon Massachusetts certifying that its "judicial administrative policies and practices include notification to domestic violence offenders of the requirements of [18 U.S.C. § 922(g)(8) & (9)] and any applicable related Federal, State or local laws." 42 U.S.C. § 3796gg-4(e)(1). The two referenced Federal statutes make it a Federal crime to possess a firearm or ammunition: (1) while subject to a qualifying abuse restraining order or (2) after being convicted of a misdemeanor crime of domestic violence.

There are some differences between the Federal and Massachusetts definitions of what constitutes a qualifying abuse restraining order (18 U.S.C. § 922[g][8]), "domestic violence" (42 U.S.C. § 13925[a][6]), and a "misdemeanor crime of domestic violence" (18 U.S.C. § 921[a][33]). For that reason it has been decided that the most practical and effective way to provide the required notification is: (1) to add it to the standard c. 209A order form, and also (2) to add it to the standard criminal complaint form which is given to *every* criminal defendant, rather than trying to provide such notice only to those charged with a qualifying offense.

Beyond knowing that these warnings are being added to our forms in order to fulfill a Federal requirement, it is not necessary that you be familiar with the somewhat complex details of these Federal statutes. However, for those with a particular interest in this area, excerpts from the relevant Federal statutes are reproduced in an appendix to this memorandum.

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1. **Revised 209A order forms.** The standard two-page “ABUSE PREVENTION ORDER (G.L. c. 209A)” form (FA-2 and FA-2a) has been modified to notify c. 209A defendants that it is a Federal crime to possess a firearm and/or ammunition while a qualifying abuse restraining order is in effect. The following wording has been added to Section A, Paragraph 12 on the first page of the form:

- ▶ Subject to certain exceptions, purchase and/or possession of a firearm and/or ammunition while this order is in effect is a federal crime. 18 U.S.C. §§ 922(g)(8) and 925.

Within the next few weeks **each court’s Forms & Systems Coordinator will receive a starter supply** of the revised two-page “ABUSE PREVENTION ORDER” (FA-2 and FA-2a) forms from our printer, Shamrock Companies. **The revised order forms should be put into use as soon as they are received, and all remaining stocks of the current FA-2 and FA-2a order forms (dated 9/95) should be destroyed and discarded.** Additional supplies of these forms may be ordered in the usual manner.

Once the revised order forms are available, *only* the revised forms should be used for all new orders. However, it is not necessary to reissue any existing orders on the new forms. Future extensions or modifications of existing orders should be recorded on the second page of the previously-issued order if space is available to do so. If there is no longer space to record a further extension or modification, you should record it on a *new* “Page 2” (FA-2a) form and then attach that to the existing 2-page order.

In addition to the change outlined above that has been made to fulfill the Federal notice requirement, three other improvements have been made to the wording of the order forms:

- ***Extensions and modifications.*** On page 2 of the order form, the three sections that are used for extending and modifying restraining orders have been revised. Currently those three sections are labeled “C. PRIOR COURT ORDER EXTENDED,” “D. FURTHER EXTENSION” and “E. PRIOR COURT ORDER MODIFIED,” respectively. This distinction between “extensions,” “further extensions” and “modifications” has sometimes resulted in a confusing chronology, since the last order recorded on the page has not always been the most recent. Sometimes it has been difficult to determine which is the most current order, or which order has been extended.

Sections C, D and E have been revised so that all three sections are labeled “MODIFICATION” and their formats are identical. Now, whenever an order is extended or otherwise modified, the judge should simply complete the next blank section – whether Section C, D or E. This should make the sequence of extensions or other modifications clearer. (The use of Section F for vacating orders is unchanged.)

- ***Continuation of firearms surrender orders.*** The language in Sections C, D and E relating to the continued surrender of firearms has been rephrased to state more clearly that if this box is checked, the firearms surrender order continues in effect. The new wording is:

- ☐ **Firearm** surrender order continued. The items surrendered under paragraph 12 will NOT be returned since doing so would present a likelihood of abuse to the plaintiff.

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- ***Order expires upon plaintiff's failure to appear.*** The first sentence in the box of instructions at the bottom of page 1 of the order form has been revised to indicate that, if the plaintiff does not appear at scheduled hearings, the order will expire. The prior wording indicated, somewhat ambiguously, that if the plaintiff did not appear "this Order may be vacated." The new wording is:

The Plaintiff must appear at scheduled hearings, or this Order will expire.

Copies of the text of the revised order forms are attached.

Please note that these revisions do not affect the two-page "COMPLAINT FOR PROTECTION FROM ABUSE (G.L. c. 209A)" (FA-1 and FA-1a) forms, which have not changed.

2. **New notice with criminal complaints.** You will shortly begin to see at the bottom of every new criminal complaint that is printed using the MassCourts Lite computer system a new notice to the defendant, which reads as follows:

**Notice to Defendant:** 42 U.S.C. § 3796gg-4(e) requires this notice: If you are convicted of a misdemeanor crime of domestic violence you may be prohibited permanently from purchasing and/or possessing a firearm and/or ammunition pursuant to 18 U.S.C. § 922(g)(9) and other applicable related Federal, State, or local laws.

I want to emphasize that this notice is being added to the standard MassCourts criminal complaint form *only* so that Massachusetts remains eligible for Federal VAWA funds. As explained above, Federal law now conditions such eligibility on our notifying in some manner the subset of criminal defendants who are "domestic violence offenders" about this particular collateral consequence of being convicted of a "misdemeanor crime of domestic violence" (as defined in Federal law).

The notice does not purport to inform the defendant of all possible collateral effects of domestic violence or other convictions. (For example, 18 U.S.C. §§ 921(a)(20) and 922(g) also prohibit a person convicted of *any* Massachusetts crime punishable by imprisonment for more than two years from purchasing or possessing a firearm or ammunition.)

This notice is not required by, nor does it implicate, any of the defendant's rights with respect to the criminal offenses charged in the complaint. It is not expected that judges will explain or elaborate on this notice or refer to it in their plea colloquies. Both Federal and Massachusetts law are clear that judges are *not* required to inform defendants about possible collateral consequences of a plea, except for the requirements of the alien warning statute (G.L. c. 278, § 29D) and Mass. R. Crim. P. 12(c)(3). See *United States v. Bouthot*, 878 F.2d 1506 (1st Cir. 1989) (state judge taking plea need not explain potential Federal firearms charges, which are collateral consequences); *Commonwealth v. Medeiros*, 48 Mass. App. Ct. 374, 720 N.E.2d 845 (1999) (except for compliance with alien warning statute, judge taking plea need not explain collateral consequences). This written notice simply fulfills a Federal funding requirement that we point out, to those defendants to whom it applies, one collateral consequence of being convicted of a particular type of offense.

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In those courts that do not use the MassCourts Lite computer system to prepare their criminal complaints, such notice will not currently appear on their printed criminal complaints. Until further notice, in those courts criminal defendants should be provided such notification by posting the attached notice in a prominent place in both the clerk-magistrate's office and the probation office. This applies only to the five divisions which do not currently utilize the MassCourts Lite system – namely, the Barnstable, Brockton, Woburn, Worcester and Springfield district courts.

If you have any questions, please direct them to Deputy General Counsel Ellen S. Shapiro in this office ([ellen.shapiro@jud.state.ma.us](mailto:ellen.shapiro@jud.state.ma.us) or 617-788-8810).

## APPENDIX

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### APPENDIX

The Federal Violence Against Women Act (VAWA) was originally adopted in 1994 (Title IV, §§ 40001–40703 of P.L. 103-322, 108 Stat. 1796) and was most recently reauthorized in 2005 (P.L. 109-162, 119 Stat. 2960).

### 18 U.S.C. § 921

#### DEFINITIONS

(a) As used in this chapter—

...

(20) The term “**crime punishable by imprisonment for a term exceeding one year**” does not include—

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

...

(32) The term “**intimate partner**” means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

(33)

(A) [T]he term “**misdemeanor crime of domestic violence**” means an offense that—

(i) is a misdemeanor under Federal, State, or Tribal law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B) (i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

### 18 U.S.C. § 922(g)

It shall be unlawful for any person—

(1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; [or]

...

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

## APPENDIX

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(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

**(9) who has been convicted in any court of a misdemeanor crime of domestic violence,**  
to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

### 18 U.S.C. § 925

[18 U.S.C. § 925 lists certain exceptions to the firearms prohibitions found in 18 U.S.C. §§ 921-931.]

### 42 U.S.C. § 3796gg-2

DEFINITIONS AND GRANT CONDITIONS. In this subchapter the definitions and grant conditions in section 13925 of this title shall apply.

### 42 U.S.C. § 3796gg-4(e)

#### JUDICIAL NOTIFICATION.—

(1) IN GENERAL.—A State or unit of local government shall not be entitled to funds under this part unless the State or unit of local government—

(A) **certifies that its judicial administrative policies and practices include notification to domestic violence offenders of the requirements delineated in section 922(g)(8) and (g)(9) of title 18, United States Code, and any applicable related Federal, State, or local laws; . . .**

### 42 U.S.C. § 13925(a)

DEFINITIONS.—In this title: . . .

(6) DOMESTIC VIOLENCE.—The term **“domestic violence”** includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

### “MISDEMEANOR”

Under Federal law, a **misdemeanor** is an offense punishable by imprisonment for more than 5 days but not more than one year. 18 U.S.C. § 3559(a). By contrast, under Massachusetts law, a misdemeanor is an offense that is not punishable by a state prison sentence – effectively, an offense that is not punishable by imprisonment for more than 2½ years. See G.L. c. 274, § 1 and c. 279, § 23.

## **Notice to Criminal Defendants:**

42 U.S.C. § 3796gg-4(e) requires this notice:

If you are convicted of  
a misdemeanor  
**crime of domestic violence**  
you may be  
**prohibited permanently**  
from purchasing and/or possessing  
a **firearm** and/or ammunition  
pursuant to 18 U.S.C. § 922(g)(9)  
and other applicable related  
Federal, State, or local laws.



**ABUSE PREVENTION ORDER**  
**(G.L. c. 209A) Page 2 of 2**

DOCKET NO.

**TRIAL COURT OF MASSACHUSETTS**



14. Police reports are on file at the \_\_\_\_\_ Police Department.

15. OUTSTANDING WARRANTS FOR THE DEFENDANT'S ARREST:

\_\_\_\_\_(DOCKET #s) \_\_\_\_\_(PCF #)

☐ 16. An imminent threat of bodily injury exists to the petitioner. Notice issued to \_\_\_\_\_ Police Department(s) by ☐ telephone ☐ other \_\_\_\_\_.

☐ **B. NOTICE TO LAW ENFORCEMENT.**

1. An appropriate law enforcement officer shall serve upon the Defendant in hand a copy of the Complaint and a certified copy of this Order (and Summons), and make return of service to this Court. If this box is checked ☐, service may instead be made by leaving such copies at the Defendant's address shown on Page 1 but only if the officer is unable to deliver such copies in hand to the Defendant.
- ☐ 2. Defendant Information Form accompanies this Order.
- ☐ 3. Defendant has been served in hand by the Court's designee: Name \_\_\_\_\_ Date \_\_\_\_\_

DATE OF ORDER	TIME OF ORDER <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	EXPIRATION DATE OF ORDER at 4 P.M.	NEXT HEARING DATE: at _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. in Courtroom _____
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The above and any subsequent Orders expire on the expiration dates indicated. Hearings on whether to continue and/or modify Orders will be held on dates and times indicated.

SIGNATURE/NAME OF JUDGE

☐ **C. MODIFICATION.**

☐ This modification was issued after a hearing at which the Plaintiff ☐ appeared ☐ did not appear and the Defendant ☐ appeared ☐ did not appear.

The Court has **ORDERED** that the prior order issued on \_\_\_\_\_, 20\_\_\_\_ be **MODIFIED** as follows:

☐ The expiration date of this order has been **EXTENDED** (See Below) ☐ **OTHER MODIFICATION(S)** \_\_\_\_\_

☐ **Firearm** surrender order continued. The items surrendered under paragraph 12 will NOT be returned since doing so would present a likelihood of abuse to the plaintiff.

Date of this Modification:	Expiration date of this order:	Signature/Name of Judge: _____
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Time of Modification: _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	Next Hearing Date: _____ at _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. Courtroom _____
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☐ **D. MODIFICATION.**

☐ This modification was issued after a hearing at which the Plaintiff ☐ appeared ☐ did not appear and the Defendant ☐ appeared ☐ did not appear.

The Court has **ORDERED** that the prior order issued on \_\_\_\_\_, 20\_\_\_\_ be **MODIFIED** as follows:

☐ The expiration date of this order has been **EXTENDED** (See Below) ☐ **OTHER MODIFICATION(S)** \_\_\_\_\_

☐ **Firearm** surrender order continued. The items surrendered under paragraph 12 will NOT be returned since doing so would present a likelihood of abuse to the plaintiff.

Date of this Modification:	Expiration date of this order:	Signature/Name of Judge: _____
----------------------------	--------------------------------	--------------------------------

Time of Modification: _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	Next Hearing Date: _____ at _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. Courtroom _____
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☐ **E. MODIFICATION.**

☐ This modification was issued after a hearing at which the Plaintiff ☐ appeared ☐ did not appear and the Defendant ☐ appeared ☐ did not appear.

The Court has **ORDERED** that the prior order issued on \_\_\_\_\_, 20\_\_\_\_ be **MODIFIED** as follows:

☐ The expiration date of this order has been **EXTENDED** (See Below) ☐ **OTHER MODIFICATION(S)** \_\_\_\_\_

☐ **Firearm** surrender order continued. The items surrendered under paragraph 12 will NOT be returned since doing so would present a likelihood of abuse to the plaintiff.

Date of this Modification:	Expiration date of this order:	Signature/Name of Judge: _____
----------------------------	--------------------------------	--------------------------------

Time of Modification: _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	Next Hearing Date: _____ at _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. Courtroom _____
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☐ **F. PRIOR COURT ORDER VACATED.**

This Court's prior Order is vacated. Law enforcement agencies shall destroy all records of such Order.

☐ **VACATED AT PLAINTIFF'S REQUEST.**

SIGNATURE/NAME OF JUDGE	DATE OF ORDER	TIME OF ORDER <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.
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WITNESS - FIRST OR CHIEF JUSTICE	A true copy, attest (Asst.) Clerk Magistrate/ (Asst.) Register of Probate
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